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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 413

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

PENNSYLVANIA GREYHOUND LINES, INC., AND GREYHOUND MANAGEMENT COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the United States Circuit Court of Appeals for the Third Circuit (R. 541–547) is reported in 91 F. (2d) 178. The findings of fact and the order of the National Labor Relations Board (R. 16–58) are reported in 1 N. L. R. B. 1.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 15, 1937 (R. 547–548). The petition for a writ of certiorari was filed on

September 14, 1937, and was granted on November 8, 1937. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

Whether—upon a finding that respondents instituted, formed, and sponsored a labor organization of their employees, dominated and interfered with its administration, and contributed financial and other support to it, contrary to Section 8 of the National Labor Relations Act—the National Labor Relations Board, in addition to ordering respondents to cease and desist from such interference, may require respondents (a) to withdraw all recognition from said organization as the representative of their employees for purposes of collective bargaining and (b) to post notices stating that such organization is so disestablished and that respondents will refrain from any such recognition thereof.

STATUTE INVOLVED

The statute involved, hereinafter referred to as the Act, is the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Sup. II, Title 29, Sec. 151 *et seq.*). The pertinent provisions are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively

through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * * * *

SEC. 10 (c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including rein-

statement of employees with or without back pay, as will effectuate the policies of this Act. * * *

STATEMENT

Upon a written charge filed by Local Division No. 1063, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America (R. 3–5), a labor organization, the Board on October 9, 1935—pursuant to Section 10 (b) of the Act—issued and served upon respondents a complaint and notice of hearing (R. 6–10). The complaint alleged that respondents had engaged in and were engaging in certain unfair labor practices affecting interstate commerce, contrary to the provisions of Section 8, subdivisions (1), (2), and (3) of the Act (R. 8–9). Hearing was held before the Board from October 22 to October 26, 1935 (R. 59 *et seq.*). Respondents waived oral argument but submitted a written brief (R. 17). Thereafter, on December 7, 1935, the Board issued its findings of fact and order (R. 16–58). The Board's findings, which were not challenged by the court below, may be summarized as follows:[1]

The Board found that both respondents are subsidiaries of the Greyhound Corporation, a holding company incorporated in Delaware (R. 18–19). The Pennsylvania Greyhound Lines, Inc., con-

[1] Of the record references in this Statement, the first, or only, page reference is to the findings of the Board, unless otherwise expressly stated. Any additional references are to the supporting evidence.

trolled by the Greyhound Corporation and by a subsidiary of the Pennsylvania Railroad in equal proportions, operates a motor bus system between the Atlantic Coast and Chicago and St. Louis (R. 18). The Greyhound Management Company is a wholly owned subsidiary of the Greyhound Corporation; it performs sundry services, including those relating to personnel problems, for the various Greyhound companies (R. 19). The two respondent companies acted, more or less indiscriminately, as the employer of the men working in the Pittsburgh garage (R. 51–52).[2] The Board found that since "the respondents do not make any effort to be precise in the designation of the employer, both companies must be regarded as employers for the purpose of this case. Since they function as one integrated system and since their activities are so related and commingled, the order of the Board in order to be effective must of necessity run against both respondents." (R. 52.)

Prior to the fall of 1933[3] the employees of the

[2] The Board found that "The Pittsburgh garage is leased and operated by the Pennsylvania Greyhound Transit Co., but it does not employ the men working there." (R. 51.)

[3] The Board pointed out in its decision that "while the National Labor Relations Act applies only to practices occurring on or after July 5, 1935 (the date of enactment of the Act), in cases where such practices have their origins in events prior to that date, knowledge of that background of events may be vital to a proper evaluation of the present practices. Consequently, in this and other parts of the findings of fact reference will be made to events prior to July 5,

Pennsylvania Greyhound System were unorganized (R. 21, 234). Shortly after the enactment of the National Industrial Recovery Act on June 16, 1933 (c. 90, 48 Stat. 195, U. S. C., Title 15, Sec. 701 *et seq.*), the management of the System decided to establish a plan of employee representation (R. 21; Bd. Ex. 73). This decision was made in the complete absence of any prior request or suggestion from the employees and without consulting their wishes (R. 21, 352). In a letter, dated July 26, 1933, to various officials of the System, W. A. Duvall, general manager of maintenance for the System, announced that "The management has decided to set up a plan of employe representatives"; and that at a meeting of the regional managers of the System "the matter was explained fully" (R. 21; Bd. Ex. 73). Duvall pointed out that "Before the plan can be set up the Management must be requested by the employes at the various divisions to do so," and to insure that such requests would be made he attached to his letter "a

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1935 wherever it is necessary for this purpose" (R. 20-21). This was entirely proper. *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), cert. den., October 18, 1937; *National Labor Relations Board* v. *Pacific Greyhound Lines*, 91 F. (2d) 458 (C. C. A. 9th). Cf. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 555; *Virginia Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515, 539, in both of which cases account was taken of events which occurred prior to the date of enactment of the statutes involved in order to reach a clear understanding and conclusion with respect to the validity of the carriers' conduct under those statutes.

sample of the petition which will be used for obtaining a list of the employes interested" (*ibid.*). Duvall likewise wrote that "It is to our interest to pick out employes to serve on the committee who will work for the interest of the company," and that the plan "should work out very well providing the proper men are selected" (*ibid.*). The sample petition attached to Duvall's letter stated that "the undersigned employees * * * request that an election be held for the purpose of electing employee representatives in this Region to confer with the Management on matters affecting our welfare." At the bottom of the petition appeared the instruction: "(Sample to be drawn up and sent to key men who will prepare one themselves in this order.)" (R. 22, Bd. Ex. 74.)

Petitions similar to the sample were then circulated among the employees by the "key men" selected by the management (R. 22, 234). After the signed petitions were submitted to the management, it "accepted" the "request" contained therein by a posted notice (*ibid.*). Thereafter, another notice was posted, listing the names of employees who were eligible to vote in elections of representatives (R. 22, 234–35; Bd. Ex. 60). Petitions, the testimony showed, were then circulated among the employees for the purpose of nominating candidates (R. 235). Following the nominations, the management posted a notice fixing the time and procedure of voting and listing the names of the persons who had been nominated (R. 22, 235;

Bd. Ex. 61). The election was held pursuant to the notice (R. 22, 235), and the names of the successful candidates were posted (R. 22, 236; Bd. Exs. 62, 63). These were denominated "Regional Committeemen," and were instructed to meet at a stated date to select from their number a "Regional Chairman" (R. 22, 237; Bd. Exs. 63, 64). Three representatives of the management were selected to represent it on the Regional Committee (R. 22; Bd. Ex. 64). These management representatives, together with respondents' regional manager, who presided, were present at the organization meeting of the Regional Committee, but withdrew while the employee representatives selected their chairman (R. 22, 237). The Regional Chairmen so selected were then instructed by the management that a meeting of the General Committee, composed of the Regional Chairmen, would be held for the purposes of electing a General Chairman and for considering the by-laws of the proposed Employees Association (R. 22, 237–38; Bd. Ex. 65).

Pursuant to these directions an organization meeting was held at the general office of the management in Cleveland (R. 22, 238). Marcus Dow, the manager of safety and personnel of the System, presided (*ibid.*). After a General Chairman for the System was elected (R. 22, 239–240), Dow presented for the consideration and approval of the Regional Chairmen a set of by-laws and regulations which had previously been prepared by the

management (R. 22, 240, 373). These were discussed by the Regional Chairmen and amendments were suggested (R. 22–23, 240–41, 373). Another meeting was held later, again presided over by a representative of the management (R 23, 241). After discussion and adoption of amendments proposed by both employee and management representatives, a series of documents were signed (*ibid.*). These included "By-laws of the Employees Association of Pennsylvania Greyhound Lines, Inc."; "Memorandum of Understanding Covering Method to be Followed in the Handling of Questions Between the Management and the Employees Covered by the Following Regulations"; "Regulations for the Government of Bus Operators"; "Regulations for the Government of Regional Clerical Employees"; and "Regulations for the Government of Employees in the Maintenance Department" (R. 23; Bd. Exs. 66, 67, 68, 69, 70).

The by-laws, which were still in effect when this proceeding was instituted (R. 23–26, 375), contained several features worthy of note. All employees of respondents engaged as bus operators, maintenance men, or clerical employees, who are not in supervisory positions, are automatically members of the Association and are eligible to vote in elections of representatives if they have worked for respondents for a period of three months prior to the nominations (R. 24, 243, 249; Bd. Ex. 67; Resp. Ex. 6). Membership ceases upon termination of employment (*ibid.*). There are no provisions for

applications for membership or for dues (*ibid.*). Non-employees of respondents are barred from representing their employees by virtue of a provision prescribing that only members of the Association, and consequently only employees, are eligible for the office of representatives (*ibid.*). Since there is no provision for meetings of the employees, there is no regular method of formulating and crystalizing the wishes of the entire group, and no procedure for instructing their representatives or receiving information and reports from them (R. 25, 243, 246).

The by-laws established regional committees which were to meet with members of the management, a general committee, composed of the regional chairmen, and a joint reviewing committee, composed of the regional chairmen and an equal number of management representatives (R. 23–24; Bd. Ex. 67; Resp. Ex. 6). Grievances were to be taken up with these committees, with the joint reviewing committee as the final board of review (R. 24; Bd. Ex. 66; Resp. Ex. 5). Cases cannot be taken from the regional committee without a *joint* submission by the representative of the employee and the representative of the management (*ibid.*). The management may thus prevent any case from being taken up simply by declining to enter into a joint submission (R. 25, 289–90). Most significant of all, the by-laws of the Association may be amended only by a two-thirds vote of the joint reviewing committee (R. 25, 375–76; Bd. Ex. 67, Resp. Ex.

6). Inasmuch as the membership of that committee is divided equally between the employees and the management (*ibid.*), this provision prevents the employees from changing the charter of their Association without the consent of the management.

"The employees do not pay any dues and do not contribute anything toward defraying the expenses of the Association. The mimeographing of forms, stenographic services, etc., and election material are all supplied by the management and all expenses of the Association and its machinery are borne by the management" (R. 25, 243–44, 248–50, 265, 292–93; Bd. Exs. 65, 68, 70, and 75 to 86, inclusive).

When elections of employee representatives were held, the management provided nomination blanks and distributed printed ballots, and prepared a list of the employees eligible to vote (R. 23, 145–46, 248–50, 475–76, 481; Bd. Exs. 75 to 86, inclusive). The elections were held on company time and company property (*ibid.*) The notices of results of elections were signed by an officer of respondents, as well as by the employees' committee (*ibid.*). Elections were conducted in this manner, both before and after the passage of the Act (R. 23, 292–93).

The Employees Association was designed and established for the stated purpose of "providing adequate representation for" the respondents' employees in "securing for them satisfactory adjust-

ment of all controversial matters" (R. 23, Bd. Ex. 67). Thus, it was expressly created to act as an agency to bargain collectively concerning wages, hours, and basic working conditions. Nevertheless, it functioned almost exclusively for the handling of individual grievances (R. 25, 280–81, 306, 373–74, 491–92). On the only occasion described in the record when the employees sought to use it to obtain a wage increase, the company official refused to join in a joint submission of the matter to the joint reviewing committee (R. 25–26, 289–90).

In May, 1935, a number of the respondents' employees in Pittsburgh secured a charter from the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, a labor organization affiliated with the American Federation of Labor, as Local Division No. 1063 of that organization (hereinafter referred to as the Union) (R. 28, 252–54). From 50 to 60 members were secured at Pittsburgh,[4] and meetings held. Such meetings were held in July, 1935, after the passage of the Act (R. 28, 77, 104, 114, 119, 254–55). The officers of respondents told a number of employees to keep out of the Union (R. 30–32, 77, 105, 114, 133, 139, 179, 180–82, 194–95, 199, 209–10, 222,

[4] The Union included both drivers and employees working in the garage (R. 28, 254). The record discloses that there were about 90 employees in the Pittsburgh garage (R. 19, 73), but does not reveal the number of drivers stationed at Pittsburgh. Thus it is impossible to tell what proportion of the total number of Pittsburgh employees were members of the Union.

255–56, 297), threatened them with loss of their jobs if they joined (R. 30–32, 79, 105, 114, 139, 181, 188, 195, 210, 222), and kept the union meetings under surveillance (R. 30–31, 77–78, 104, 114, 136, 181, 195, 210, 222, 255, 297). This activity of respondents was begun before (R. 30–32, 114, 139, 179–81, 194–95, 209–10, 255–56) and continued after (R. 30–32, 77–79, 104–05, 181–82, 188, 195, 210–11, 222, 297) the date of the passage of the Act, July 5, 1935. These threats of respondents were followed up on July 30, 1935, by the discharge of five employees because they had joined the Union (R. 38–45, 81–2, 105–06, 115, 182, 211–12). Each of these men had been told by one or another of respondents' officials that their union activities would result in their discharge (R. 30–32, 79, 105, 114, 181, 210).

Upon finding these facts the Board concluded that respondents (1) had interfered with their employees in the exercise of their right to self-organization in violation of Section 8 (1) of the Act, (2) had discharged employees in order to discourage membership in Local Division No. 1063 in violation of Section 8 (3), and (3) had dominated and interfered with the administration of the Employees Association, a labor organization, and contributed financial and other support to it, in violation of Section 8 (2) (R. 53–57). The Board ordered that respondents cease and desist from each of these unfair labor practices (R. 57–58). In addition the

Board affirmatively ordered respondents to reinstate with back pay five employees unlawfully discharged, and to withdraw recognition from the Employees Association as the representative of the employees (R. 58). The latter provisions of the order, which are the provisions immediately involved here, require respondents to—

> (c) Withdraw all recognition from the Employees Association of the Pennsylvania Greyhound Lines, Inc. as representative of their employees, including the employees of the Pennsylvania Greyhound System, for the purpose of dealing with respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;
>
> (d) Post notices in conspicuous places in all of the places of business wherein their employees, including employees of the Pennsylvania Greyhound System, are engaged, stating that said Association is so disestablished and that respondents will refrain from any such recognition thereof.

The Board dismissed the complaint with respect to four employees alleged to have been unlawfully discharged (R. 58).

On or about December 10, 1935, the Board, pursuant to Section 10 (e) of the Act, petitioned the Circuit Court of Appeals for the Third Circuit for the enforcement of the foregoing order (R. 529–32). The case was first argued in the Circuit Court of Appeals on April 1, 1936 (R. 539). After two re-arguments (R. 539, 540–41) the court finally

handed down its decision on June 15, 1937 (R. 541–47). The court held that all of the Board's order should be enforced except subdivisions (c) and (d) of paragraph 4, quoted above, requiring the withdrawal of recognition from the Association (R. 541, 547–48).

The court did not hold that these provisions were not warranted by the findings and evidence; on the contrary it affirmed the negative portion of the Board's order, based upon the same evidence, requiring respondents to cease and desist from dominating or interfering with or contributing financial support to the Employees Association. Judge Buffington, in a brief opinion, concurred in as to this point by Judge Dickinson, declared that (R. 541) "The majority of the Court feels that sections (c) and (d) should not be enforced because there is no warrant in the Act for such action. No election has been held; the union enjoined has not been notified or heard, but in advance of an election by the men, said union is for all practical purposes outlawed, and that without hearing." In his separate opinion Judge Dickinson stated that the provisions of the Board's order here in question are "open to the construction that it means a condemnation of a union limited in membership to the employees of any particular employer" (R. 547).[5] Judge Biggs concurred in the opinion of

[5] Judge Dickinson also dissented from the enforcement of other provisions of the Board's order not here in issue.

the court to the extent that it enforced the Board's order, but dissented from the refusal of the court to enforce the provisions here in question (R. 541–45).

On September 14, 1937, the Board filed its petition for a writ of certiorari in this Court, to review that portion of the judgment below refusing to enforce subdivisions (c) and (d) of paragraph 4 of the Board's order. This petition was granted on November 8, 1937 (R. 549). No cross-petition has been filed by respondents. Accordingly, the only issues before the Court relate to the validity of those provisions of the Board's order which the court below refused to enforce.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that subdivisions (c) and (d) of paragraph 4 of the Board's order are not warranted by Section 10 (c) of the Act.

(2) In refusing to enforce and in setting aside subdivisions (c) and (d) of paragraph 4 of the Board's order.

SUMMARY OF ARGUMENT

A. Section 10 (c) of the National Labor Relations Act empowers the National Labor Relations Board to order any person found to have engaged in any unfair labor practice both to cease and desist from such practice and "to take such affirmative action * * * as will effectuate the policies of

this Act." The order that respondents withdraw recognition from the Employees Association, an organization found upon unquestioned evidence to have been established and completely dominated by respondents, will clearly serve to effectuate the policies of the Act. The Employees Association never was the freely chosen representative of respondents' employees. It was not transformed into such representative merely by the withdrawal of respondents' formal support pursuant to other provisions of the Board's order. For the respondents to continue to recognize and bargain collectively with an organization which is not representative of their employees will embarrass and impede the employees in choosing a genuine representative for purposes of collective bargaining. Moreover, withdrawal of recognition is necessary in order to restore the *status quo* and prevent the respondents from reaping benefit from their unlawful conduct. If respondents are permitted to continue to treat with and recognize the Association as the bargaining representative of their employees, they are licensed to perpetuate the principal effect of their previous unlawful interference with the employees in their choice of representatives. In any event, on the facts of the instant case, the portions of the Board's order here in question may be justified as no more than a specification of the conduct requisite to comply with the cease and desist provisions of the order.

B. The legislative history of the Act and its statutory precedents show that Congress expressly contemplated that the Board have power to compel withdrawal of recognition from company-dominated unions. The report of the House Committee on Labor shows definitely that Section 10 (c) was intended to authorize the Board to compel employers to refrain "from bargaining with an organization corrupted by unfair labor practices." (H. Rep. 1147, 74th Cong., 1st Sess., p. 24.) In *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, and *Virginian Ry. Co.* v. *System Federation No. 40,* 300 U. S. 515, this Court enforced the Railway Labor Act (which did not contain statutory authorization as specific as that in Section 10 (c) of the National Labor Relations Act) by ordering withdrawal of recognition and disestablishment of company-dominated unions. The Railway Labor Act, as construed in the *Texas & New Orleans* case, was a chief precedent for the National Labor Relations Act, and there can be no question that the latter Act was intended to authorize use of the sanctions approved by this Court in the *Texas* case. Precedents, familiar to Congress, established under Section 7 (a) of the National Industrial Recovery Act and Public Resolution No. 44, point to the same conclusion.

C. The argument that withdrawal of recognition of a labor organization can be ordered only when it is affirmatively shown that another organization has been chosen as the representative of the ma-

jority of the employees rests upon a fundamental misconception of the purposes of the Act and the powers of the Board thereunder. This argument assumes that the Board can only order withdrawal of recognition in proceedings brought under Section 8 (5) of the Act. The portions of the Board's order here in question are properly based upon subdivisions (1) and (2) of Section 8, and are intended to effectuate the policies of those subdivisions. That an order of disestablishment need not be based upon Sections 8 (5) and 9 (c) is shown by the *Texas & New Orleans* case, *supra*. The Railway Labor Act of 1926, enforced in that case by requiring the disestablishment of a company-dominated union, contained the equivalent of subdivisions (1) and (2) of Section 8 of the National Labor Relations Act but not of Sections 8 (5) and 9 (c).

The respondents can not complain because the Association was not notified of or made a party to the Board proceedings. The Act does not require the Association to be made a party. It requires only that the employer be notified, since only the employer is bound by the Board's order. Other persons affected by the order may protect themselves either by intervening before the Board or by seeking review of the Board's order in the circuit court of appeals. This procedure is unquestionably constitutional. In any event, respondents can complain only of the infringement of their own constitutional immunities and not of those of their employees.

The Board's findings that the respondents, rather than other affiliates of the Greyhound system, were the employers of the workers involved in this case, are amply supported by the evidence.

The claim that the Board lacked jurisdiction because the charge was not filed by respondents' employees is without merit because (1) the charge was filed by such employees, through the labor organization representing them, and (2) the statute does not require that the charge be filed by employees.

ARGUMENT

THE ACTION OF THE BOARD IN REQUIRING RESPONDENTS TO WITHDRAW RECOGNITION FROM THE EMPLOYEES ASSOCIATION IS WITHIN THE AUTHORITY CONFERRED BY THE ACT

The respondents herein have sponsored, dominated, and financially supported a labor organization in unquestioned violation of Sections 8 (1) and 8 (2) of the National Labor Relations Act. Pursuant to Section 10 (c) of the Act, the National Labor Relations Board ordered the respondents to cease and desist from such practices. This order the court below enforced; and the respondents have acquiesced in the enforcement.

The principal question here presented is whether this action exhausted the power of the Board, or whether under the Act the Board was further authorized to order the respondents, as it did, to with-

draw recognition from the labor organization so sponsored, dominated and supported by them.

Section 10 (c) of the National Labor Relations Act empowers the Board to order any person found to have engaged in or to be engaging in the unfair labor practices proscribed by the Act (1) to "cease and desist" from such practices, and (2) to "take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." The part of the Board's order challenged herein, which was made under the second branch of this authorization, does not require dissolution of the labor organization dominated by the respondents. It requires only that respondents cease dealing with the organization as the representative of its employees for purposes of collective bargaining. Though stated in affirmative form, it is largely negative in effect. It simply directs non-recognition.[6]

It will be shown that the action of the Board here in question will effectuate the policy of the Act and hence is within the express language of the statutory authorization. It will be shown further, from the legislative history and other antecedents of the Act, that Congress specifically contemplated that

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[6] The term "disestablish" is used in its dictionary sense, i. e., "to deprive of fixed or established state or character; specifically, to withdraw state patronage, support, or exclusive recognition from; as to disestablish the church." *New Standard Dictionary of the English Language* (Funk & Wagnall's, 1935), p. 725.

the Board should exercise the very power now challenged.

A. THE ACTION OF THE BOARD WILL EFFECTUATE THE POLICIES OF THE ACT

The policies of the Act are set forth in Section 1. It is there declared "to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce * * * by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." To effectuate these policies Congress outlawed the unfair labor practices enumerated in Section 8 of the Act. Among these practices is the domination by an employer of a labor organization of his employees (Section 8 (2)).

The promotion of collective bargaining as a means to industrial peace, which is the central objective of the Act, requires as a postulate the complete freedom of employees to choose their own representatives without interference by the employer. "Such collective action would be a mockery if representation were made futile by interferences with freedom of choice," *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,*

281 U. S. 548, 570. Abundant experience demonstrates that the confidence of employees in means of peaceful negotiation of labor disputes, and hence their willingness to resort to them, can only be obtained if the negotiators on their behalf are truly selected by them; that only under the same conditions will agreements, once negotiated, command their adherence. The prostitution of purported labor organizations to the purposes of the employer, or the suspicion of it, renders them, far from agencies of peace, affirmative instruments of dissension.

That portion of the Board's order which directs the respondents to desist from dominating and interfering with the Employees Association is thus in execution of one of the basic purposes of the Act. The same thing, we think, is also true of the remaining portion of the order which requires withdrawal of recognition from the Association. The contention that, while the one part of the order will serve to remove a cause of industrial strife, the other will not, has no discoverable basis either in reason or experience.

(1) The effectuation of the purposes of the Act in these proceedings requires the fostering of the conditions for genuine collective bargaining, as conceived in the Act, between the respondents and their employees. This implies complete freedom on the part of the employees in their choice of representatives.

The Employees Association, by the unchallenged findings of the Board, was, historically and currently, "entirely the creature of the management" (R. 26). The respondents' employees never had the opportunity to make an independent decision whether they wished to be represented by it (R. 23, 26, 242–43, 246). The Association was not, therefore, at the time of the Board's order, their freely chosen representative. The mere cessation of respondents' unlawful domination, as ordered by the Board, will not of itself constitute the Association the freely chosen representative of the employees. Cessation of coercion is merely the condition, not the equivalent, of consent. In opposing the portion of the Board's order in question, the respondents accordingly are asserting a right to recognize as the representative of their employees an organization which is not the employees' representative. The contention, in effect, is that choice by the employees of a genuine representative will be unembarrassed by recognition in the meantime of a false one. Manifestly the contention is untenable.

Recognition is the pivotal factor in collective bargaining. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515. Without recognition of a bargaining agency collective bargaining cannot take place. The most valuable asset that a labor organization can have, therefore, is the employer's recognition

of it as the bargaining agency of his employees. By conferring such recognition or by withholding it, the employer often has the power to make or break a labor organization of his employees. Obviously, the individual employee is strongly motivated to select as his representative that organization which is recognized by the employer and which he believes will, therefore, be most effective in bargaining with the employer. Once an employer has conferred recognition on a particular organization, no matter how this recognition was obtained, that organization has an initial advantage over any other in securing the adherence of the employees.[7]

The efforts of the respondents' employees toward self-organization and independent selection of bargaining representatives cannot fail to be heavily influenced if the respondents are left free to utilize this powerful weapon of recognition in support of the Association. The respondents would thereby be enabled effectively to hamper, and

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[7] On the basic significance of recognition in collective bargaining see Commons, John R., and Andrews, John B., *Principles of Labor Legislation* (Harper & Bros., 4th Ed., 1936), p. 372; Catlin, W. B., *The Labor Problem* (Harper & Bros., 1926), pp. 317, 327; Rufener, L. A., *Principles of Economics* (Houghton-Mifflin Co., 1927), p. 399; Twentieth Century Fund, Inc., *Labor and the Government* (1935), p. 47; Yoder, Dale, *Labor Economics and Labor Problems* (1933), p. 443; U. S. Department of Labor, Bureau of Labor Statistics, *Characteristics of Company Unions*, Bulletin No. 634, Chs. VII, XXII.

in substantial likelihood to prevent, the growth of any bargaining representative other than the Association. An immunity to exercise this influence, in favor of an agency proved not to be entitled to it, is patently inconsistent with the purposes of the Act. Doubly is this so because of the respondents' past relationship to the agency. The basic structure of the Employees Association, its policies, its leading personnel, above all the attitude of the employees toward it, have all been decisively shaped by the respondents' unfair labor practices. Such an organization cannot suddenly be transformed into a free and independent agency, capable of representing the employees' will, merely by withdrawal of the formal support of the employer. Its continued recognition constitutes a peculiarly serious impediment to the development of genuine representation. To restore to the respondents' employees that full freedom of self-organization and designation of representatives guaranteed them by the Act, this means of influencing or controlling their choice of representatives should be placed beyond respondents' power.

(2) Effectuation of the purposes of the Act in these proceedings requires, as a minimum, that the *status quo* be so restored that respondents shall reap no benefit from their unlawful conduct. The proscription by Congress of the unfair labor practices enumerated in Section 8 cannot be completely effective so long as any premium attaches to violations of the statute. The Board, we

think, is clearly empowered, in effectuating the purposes of the Act, to require that the relationship between the respondents and its employees be restored to that which it would have been had no violation of the statute occurred.

The mere cessation of respondents' acts of domination of the Employees Association will not erase the consequences of what respondents have done. For respondents have violated Sections 8 (1) and 8 (2) otherwise than by dominating the Association. They have violated those sections, in addition, by foisting the Association upon their employees as a bargaining representative. This latter result, indeed, may fairly be taken as the primary object of respondents' actions—not domination as an end in itself. Hence, if respondents are permitted to continue to treat with and recognize the Association as the bargaining representative of their employees, they are licensed to perpetuate the principal effect of their previous unlawful interference—the collective bargaining status which their recognition of it gave the Association.

As in cases of unlawful discharge, the wrong itself is the measure of the appropriate remedy. Only thus can similar wrongs be prevented in the future. The respondents having established the Association as a bargaining representative in violation of the Act ought not to be heard to object to its disestablishment, even in the absence of affirmative showing—which clearly exists—that continued recognition of the Association would itself con-

stitute a further interference with free choice of a bargaining representative by their employees.[8]

Disestablishment of the Association as the employees' representative is thus twice justified, first, as an indispensable condition for assuring that full freedom in the choice of representatives which it is the object of the Act to secure; and second, as a means of discouraging unfair labor practices by preventing employers from reaping any benefits therefrom. These reasons for the remedial provisions of the Board's order were well expresed in the language of the Board's decision (R. 27–28):

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[8] The inclusion of dissolution provisions in antitrust decrees affords a close analogy to the remedial provision in the present order. In *Standard Oil Co.* v. *United States*, 221 U. S. 1, the Court said (at pp. 77–78):

"* * * where the condition which has been brought about in violation of the statute, in and of itself, is not only a continued attempt to monopolize, but also a monopolization, the duty to enforce the statute requires the application of broader and more controlling remedies. As penalties which are not authorized by law may not be inflicted by judicial authority, it follows that to meet the situation with which we are confronted the application of remedies twofold in character becomes essential: 1st. To forbid the doing in the future of acts like those which we have found to have been done in the past which would be violative of the statute. 2d. The exertion of such measure of relief as will effectually dissolve the combination found to exist in violation of the statute, and thus neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about."

In this case it is also necessary to "neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about."

The participation of the respondents in the Association—their domination, interference and support—are unfair labor practices proscribed by Section 8, subdivision (2). There can be but one way of remedying the unlawful conduct in this case and that is a complete withdrawal of all recognition from the Association as representative of the employees, in addition to the order requiring cessation of such domination, interference and support. The control of the management so permeates every aspect of its operations that the Association and the management cannot be regarded as separate entities so as to require only the cessation of the latter's domination, interference and support. The management's manipulation of the Association to prevent genuine employee organization can be offset only by such complete withdrawal of recognition. Since merely to order a cessation of the unfair practices prohibited by Section 8, subdivision (2) will be ineffective to remedy the result of those practices, such affirmative withdrawal of recognition from the Association as an organization representative of the employees in their relations with the management is necessary to effectuate the policies of the National Labor Relations Act.

(3) What has been said would be applicable to a company-dominated union far less intimately connected with the management than the Employees Association is shown to have been. In the peculiar circumstances disclosed by the present rec-

ord, we think that the Board's order of disestablishment is justified, in any event, as no more than a specification of the conduct requisite to comply with the cease and desist provisions of the Board's order. In this view, the refusal of the court below operates improperly to narrow the operation of these unquestionably valid portions of the order and, indeed, to give the appearance of sanction to conduct which, independently of the order, would appear to constitute a direct violation of Section 8 (1) of the Act.

The Board's finding that "the Association and the management cannot be regarded as separate entities" (R. 27) is amply supported by the record.* The current structure and mode of operation of the Association, apart from the circumstances of its inception, demonstrated it to be an integral part of the respondents' scheme of management—in effect, a branch of respondents' personnel division in which the employees were permitted certain limited privileges of participation (R. 23–26). Membership in the Association was automatic; and the members paid no dues. The Association had no regular method of meeting whereby the employees could instruct the employee representatives or the representatives consult the employees.

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* The Board stated: "The words domination, interference and support are separately inadequate to describe the management's part in the Association. The totality of the management's prescribed organic structure of the Association and the management's participation results in complete subjugation and control." (R. 26.)

The basic unit in its operation appears to have been the regional committees. Upon each of these committees sat three employee representatives and three management representatives, plus the Regional Manager, who presided—giving the management effective control. Above the regional committees was the general committee of employee representatives. Through the system of "joint submissions" the management controlled the matters to be discussed by this committee. Above the general committee was the joint reviewing committee, the decisions of which were final. A "joint submission" was again required to present matters to this committee, half of whose members were management representatives; and a two-thirds vote was necessary to a decision. The management, which had established this method of operation for the Association, could prevent it from being changed, since the by-laws of the Association itself as well as of the joint reviewing committee could only be amended by a two-thirds vote of that committee. See pages 9–11, *supra*.

The respondents have not explained, nor did the court below do so, how the basic reconstitution of the Association, which obviously will be essential in order to comply with the cease and desist portions of the Board's order, is to be accomplished without its virtual disestablishment. Prior to such reconstitution, any dealings with or recognition of the Association would plainly be in violation of

those portions of the order. Yet the reconstitution must be the work of the employees, not of the respondents. If the employees do not act, the respondents can have no choice but to withdraw recognition. If the employees do act, on the other hand, the action can only be by extra-constitutional means resulting in the formation, in effect, of a new organization enjoying for the first time an independent existence free from the routine participation and control of the management.[10]

In these circumstances the respondents' insistence upon continued recognition of the Association amounts to insistence upon a right to offer the employees in advance, as an inducement to formation of the reconstituted organization, the coveted status of recognition. Such an offer—made thus precipitately and without regard to the actual representative character of the organization—would seem in itself to be a violation of Section 8 (1). *A fortiori* it is inconsistent with compliance in good faith with the cease and desist portions of the Board's order. Compare *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548.

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[10] Nothing in the Board's order, of course, will prevent the Association—whenever it is so reconstituted and freed from the respondents' control—from seeking to establish by appropriate showing before the Board that it has become the free and uncoerced choice of a majority of respondents' employees.

B. CONGRESS INTENDED THAT THE BOARD POSSESS POWER TO COMPEL WITHDRAWAL OF RECOGNITION FROM A COMPANY-DOMINATED UNION

1. THE LEGISLATIVE HISTORY OF THE ACT

The legislative history of the National Labor Relations Act shows that Congress expressly contemplated that the Board would have power to compel withdrawal of recognition from a company-dominated union. Speaking of the unfair labor practices prohibited by Section 8 (2), the report of the House Committee on Labor declared:

> * * * Collective bargaining is reduced to a sham when the employer sits on both sides of the table by supporting a particular organization with which he deals. * * * [House Report No. 1147, 74th Cong., 1st Sess., p. 18.]

In explanation of the provision in Section 10 (c) empowering the Board to require a respondent to take such affirmative action as will effectuate the policies of the Act, this same report states (p. 24):

> * * * The orders will of course be adapted to the needs of the individual case; they may include such matters as refraining from collective bargaining with a minority group, recognition of the agency chosen by the majority for the purposes of collective bargaining, posting of appropriate bulletins, *refraining from bargaining with an organization corrupted by unfair labor practices.* * * * [Italics supplied.]

2. THE PRECEDENTS ESTABLISHED UNDER THE RAILWAY LABOR ACT

It is a familiar principle of statutory construction that statutes *in pari materia* will be given the same construction. *Cf. United States Navigation Co.* v. *Cunard S. S. Co.*, 284 U. S. 474, 481. This Court has already recognized that this principle applies to the Railway Labor Act and the National Labor Relations Act. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 44–45. Moreover, the House Committee Report expressly declares that the Labor Relations Act is "an amplification and further clarification of the principles enacted into law by the Railway Labor Act and by section 7 (a) of the National Industrial Recovery Act * * *." (House Report No. 1147, 74th Cong., 1st Sess., p. 3.)

It is thus most significant that in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, and in *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515, this Court enforced the Railway Labor Act (which did not contain statutory authorization as specific as that in Section 10 (c) of the National Labor Relations Act) by ordering withdrawal of recognition and disestablishment of company-dominated unions.[11] The Railway Labor Act, as construed in the *Texas & New Orleans* case, was a direct precedent for the National Labor Relations Act, and there can be no

[11] This was the necessary effect, although not the specific language, of the decree in the *Virginian* case.

question that the latter Act was intended to authorize use of the sanctions approved by this Court in the *Texas* case.

In that case the Brotherhood filed suit for the enforcement by injunction of Section 2 (3) of the Railway Labor Act of 1926, which provided that representatives for the purposes of the Act

> shall be designated by the respective parties * * * without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.

The District Court entered a temporary injunction "following closely the language of the Act", as the court itself later described it (24 F. (2d) 426, 427). Thereafter, the Brotherhood instituted a proceeding in the District Court to punish the Railroad for contempt, alleging a long series of acts in violation of the injunction. The court found the carrier and certain of its officers in contempt (24 F. (2d) 426). The acts of contempt cited by the court which are relevant to the issues before this Court in the case at bar were (1) recognition of the "Association of Clerical Employees—Southern Pacific Lines" as the representative of all the clerical employees on the basis of authorizations of an alleged majority of the employees, previously obtained by interference, influence, and coercion, and "action taken under" such recognition, including the negotiation of a wage agreement with the Association; and (2) permission to

organizers for the Association to operate among the men on company time and pay, and with company consent and approval. To remedy these violations of the injunction decree, the court directed the railroad company and certain of its officers to:

(1) Completely disestablish the Association as it was then constituted as the representative of the clerical employees, and reinstate and reestablish the Brotherhood as the representative of the clerical employees in all matters relating to their employment, disputes as to pay, working conditions, and the like, until such time as the employees by a secret ballot taken in accordance with the further direction of the court, and without the dictation or interference of the railroad company and its officers, should choose other representatives (281 U. S. at 557).

(2) "Cease to permit officers and representatives of said Association to organize, promote, manage and attend to the business of said Association, or any organization of said clerical employees hereafter formed, on the * * * company's time and pay, and at its expense and under the aegis of authority of the railroad * * *, unless a similar privilege is accorded to officers and representatives of complainant Brotherhood." (Record in No. 469, October Term, 1929, pp. 267 *et seq.*)

Thereafter the Brotherhood filed an amended bill of complaint which incorporated most of the new matter alleged and proved in the contempt proceedings. Upon final hearing the District Court

made permanent the temporary injunction and reaffirmed the findings and conclusions previously made (25 F. (2d) 873).

On appeal the Circuit Court of Appeals for the Fifth Circuit affirmed the ruling below (33 F. (2d) 13). It found that the allegations and proof warranted the granting of injunctive relief; and that the action of the court in the contempt proceedings "did not go beyond requiring the undoing of what had been done in violation of the injunction. In dealing with the situation created by violations of the injunction, it was permissible for the court to provide for the restoration of the status quo" (p. 17).

This Court unanimously sustained the action of the court below in all respects. Regarding the relation between the Railroad and the Association, this Court said (281 U. S. 548, 560):

> The circumstances of the soliciting of authorizations and memberships on behalf of the Association, the fact that employees of the Railroad Company who were active in promoting the development of the Association were permitted to devote their time to that enterprise without deduction from their pay, the charge to the Railroad Company of expenses incurred in recruiting members of the Association, the reports made to the Railroad Company of the progress of these efforts, and the discharge from the service of the Railroad Company of leading representatives of the Brotherhood and the can-

> cellation of their passes, gave support, despite the attempted justification of these proceedings, to the conclusion of the courts below that the Railroad Company and its officers were actually engaged in promoting the organization of the Association in the interest of the Company and in opposition to the Brotherhood, and that these activities constituted an actual interference with the liberty of the clerical employees in the selection of their representatives.

The Court refused to find "that the decree below goes beyond the proper enforcement of the provision of the Railway Labor Act" (p. 571). Since the "decree below," i. e., of the Circuit Court of Appeals, affirmed all three of the orders made by the District Judge, including the order of contempt, this Court thus definitely approved that order as appropriate to the enforcement of the Act.

In conferring upon the Board the authority contained in Section 10 (c) of the Act, Congress was guided by and accepted as a precedent this Court's decision in the *Texas & New Orleans* case. Indeed, the Senate Committee made express mention in its report of the fact that the decree approved by this Court in that case

> * * * compelled the company (1) to completely disestablish its company union as representative of its employees * * * [Senate Report No. 573, 74th Cong., 1st Sess., p. 17].

The fact that the order involved in the *Texas & New Orleans* case was a judicial sanction in contempt proceedings is immaterial. Speaking of a provision of the order of the District Court in that case directing the Railroad to reinstate with back pay certain employees discharged in violation of the Railway Labor Act, this Court said in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.* (301 U. S. 1, 48):

> The requirement of restoration to service, of employees discharged in violation of the (Railway Labor) Act, was thus a sanction imposed in the enforcement of a judicial decree. We do not doubt that Congress could impose a like sanction for the enforcement of its valid regulation. The fact that in the one case it was a judicial sanction, and in the other a legislative one, is not an essential difference in determining its propriety.

More recently, in *Virginian Ry. Co.* v. *System Federation No. 40, supra,* this Court upheld an order of the District Court under the Railway Labor Act, as amended by the Act of June 21, 1934, c. 691, 48 Stat. 1185, 45 U. S. C. §§ 151–163, requiring the recognition of a *bona fide* labor organization and the non-recognition as representative of the employees of a company-dominated union which had been set up by the carrier. No element of contempt was involved. "In considering the propriety of the equitable relief granted here," this Court declared, "we cannot ignore the judgment of Congress, deliberately expressed in legislation, that

where the obstruction of the company union is removed, the meeting of employers and employees at the conference table is a powerful aid to industrial peace" (300 U. S. 515, 551).

3. THE PRECEDENTS ESTABLISHED UNDER THE NATIONAL INDUSTRIAL RECOVERY ACT AND PUBLIC RESOLUTION NO. 44

Congress was also guided by the experiences and decisions of the old National Labor Relations Board and other labor boards established to enforce the provisions of Section 7 (a) of the National Industrial Recovery Act. That Congress was well informed of the activities and decisions of these boards there can be no doubt.[12]

During the less than one year of its existence the old National Labor Relations Board handled many cases involving employer interference with the self-organization of employees through the device of the company-dominated union. In those cases where the Board found that the employer had violated Section 7 (a) by fostering, dominating or supporting a labor organization of his employees, it invariably required the disestablishment of such organization by the withdrawal of recognition therefrom as a bargaining representative of the

[12] In House Report No. 1147, *supra*, at p. 5, the Committee stated that the old National Labor Relations Board "has enriched the body of labor law by a notable series of decisions interpreting and applying Section 7 (a)." See also pp. 17–19.

employees.[13] The Petroleum Labor Policy Board made similar orders in two cases.[14] In view of these precedents established by administrative boards set up to enforce the analogous provisions of Section 7 (a),[15] it is plain that Congress intended that the National Labor Relations Board should have the power to order the withdrawal of recognition from a company-dominated union where the facts require such action in order to effectuate the policies of the Act.

C. THE ARGUMENTS THAT THE BOARD DID NOT HAVE AUTHORITY TO REQUIRE WITHDRAWAL OF RECOGNITION FROM THE EMPLOYEES' ASSOCIATION ARE WITHOUT SUBSTANCE

The reasons advanced by Judges Buffington and Dickinson for refusing to enforce subsections (c) and (d) of paragraph 4 of the Board's order were three in number: (1) that no election had been

[13] *Matter of Stahl-Urban Co.*, 2 N. L. R. B. (old) 149 (1935); *Matter of Proctor & Gamble Mfg. Co.*, *ibid.*, p. 192 (1935); *Matter of Universal Folding Box Co.*, *ibid.*, p. 284 (1935); *Matter of Standard Tailoring Co.*, *ibid.*, p. 422; (1935); *Matter of National Battery Co.*, *ibid.*, p. 484 (1935). *Cf. Matter of North Carolina Granite Corp.*, 1 N. L. R. B. (old) 89 (1934); *Matter of Danbury & Bethel Fur Co.*, *ibid.*, p. 195 (1934); *Matter of Samson Tire & Rubber Corp.*, 2 N. L. R. B. (old) 499 (1935).

[14] *Matter of the Texas Co.*, Decisions of the Petroleum Labor Policy Board, p. 29 (1934); *Matter of Keener Oil and Gas Co.*, *ibid.*, p. 53 (1935).

[15] These precedents are entitled to weight. *United States Navigation Co.* v. *Cunard S. S. Co.*, 284 U. S. 474, 481.

held,[16] (2) that the Employees Association had not been notified or heard, and (3) that the order would prevent the existence of a union limited in membership to the employees of a particular employer. In addition to these points, respondents have urged (4) that they are not the employers of the members of the Employees Association—the proper respondents being subsidiaries of the respondent Pennsylvania Greyhound Lines, Inc., and (5) that the Board had no jurisdiction because no charge had been filed with it by any of respondents' employees.[17]

None of these objections to the Board's action is substantial. They will be considered in turn.

(1) The suggestion that withdrawal of recognition of a labor organization can be ordered only when it is affirmatively shown that another organization has been chosen as the representative of the

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[16] The same point has been expressed somewhat differently by respondents in this case and by the Circuit Court of Appeals for the Ninth Circuit in the *Pacific Greyhound* case No. 504, October Term, 1937. The substance of the argument is that the Board may order an employer to withdraw recognition from a union only in a proceeding brought under Section 8 (5) where it has affirmatively been shown, through an election or otherwise, that another labor organization has already been chosen as the representative of the majority of the employees.

[17] Although these last two points, if well taken, would run against the entire order of the Board, they are open for consideration here—since the respondents did not file a cross petition—only as possible grounds for supporting the refusal of the court below to enforce subdivisions (c) and (d) of paragraph 4 of the order.

majority of the employees rests upon a fundamental misconception of the purposes of the Act and the powers of the Board thereunder.

The Act, of course, contains comprehensive machinery (Section 9 (c)) for determining who, if anyone, is the representative of a majority of the employees, and authorizes the Board (Section 8 (5)) to order the employer to bargain collectively with such representative. Compare *Virginian Ry. Co.* v. *System Federation No. 40,* 300 U. S. 515. In such a proceeding the Board may order withdrawal of recognition from one union in connection with its order to bargain collectively with another. Such a direction would presuppose an appropriate determination that the second union had been duly designated by the employees. Assuming such designation, it would be immaterial whether the disestablished union were a *bona fide* labor organization or one dominated by the employer.

The present proceeding is of an entirely different character. It is not brought under Section 8 (5) of the Act but under Sections 8 (1) and 8 (2). The respondents are charged with interfering with their employees' rights to self-organization, not by recognizing the representative of a minority instead of a majority, but by denying the employees the right freely to choose any representative at all. One of the means of achieving this result has been the recognition of an organization established and dominated by the employer and never selected by the employees themselves. These acts of the re-

spondents constitute unfair labor practices under Sections 8 (1) and 8 (2), and may therefore be remedied by the Board, irrespective of whether a majority of the employees have selected an independent representative.

Disestablishment of the Employees Association, far from depending upon prior designation of a majority representative, is affirmatively necessary for the very purpose of making possible a free designation. Not only is it required in order to prevent respondents from reaping a benefit from their past violation of Section 8 (2), but it is necessary in order to establish for the future the right of free choice of representatives guaranteed by Section 7. See pages 21–29, *supra*. The statutory duty of the employer to bargain collectively with the freely chosen representative of his employees would lose much of its significance if the employer, by prior recognition of a dummy organization, were enabled to hinder or even prevent the choosing of the representative. The Act contains no such hiatus.

In the *Texas & New Orleans* case, discussed *supra* pages 34–39, the District Court ordered the disestablishment of a company-dominated union, as the order expressly stated, prior to the holding of an election for the purpose of choosing representatives. See 24 F. (2d) 426, 434. It did so under a statute (the Railway Labor Act of 1926, before the 1934 amendments) which imposed no enforceable obligation whatever to bargain collectively—which contained the equivalent of Sections 8 (1) and 8

(2) (though stated in general language) but not of Sections 9 (c) or 8 (5). This Court's approval of that decree is thus directly inconsistent with the view of the court below that disestablishment can only be ordered (1) after an election showing that the company-dominated union is not supported by a majority of the employees, and (2) in connection with a proceeding to enforce the duty to bargain collectively with the chosen representative. Nor can that case be distinguished on the ground that there the Brotherhood had originally been the representative of the employees before establishment of the company-dominated union. Establishment of such a union for the purpose of defeating the self-organization of employees is equally a violation of the employees' rights, whether done before or after the employees' first manifestation of favor for an independent union, or even in the absence of such manifestation.[18]

[18] The old National Labor Relations Board made no such distinction as the respondents and the Circuit Court of Appeals attempt to draw here. Where the facts in the case required the disestablishment of a company-dominated union in order to effectuate the purposes of Section 7 (a), that Board uniformly ordered the withdrawal of recognition as a bargaining representative from such union, regardless of whether there was in existence an independent *bona fide* union which was contending for the right to represent the employees. In *Matter of Stahl-Urban Co.*, 2 N. L. R. B. (old) 149 (1935), and *Matter of Standard Tailoring Co.*, *ibid.*, p. 422 (1935), on facts similar to those involved here, that Board directed the employers to withdraw recognition from company-dominated unions as collective bargaining agencies.

(2) The holding of the court below that the order addressed to the *respondents* is invalid because the *Association* had not been formally notified or made a party to the proceedings is unsound for numerous reasons.

(a) The court's holding was based upon the view that the Board is without authority under the statute to order the disestablishment of a company-dominated union unless the union disestablished has been notified and heard. The brief opinion announcing this conclusion contains no analysis of the provisions of the Act. Such analysis, we think, will demonstrate beyond question that the Act does not make the Association—assuming it to be an independent entity—an indispensable party to the proceedings. The Act requires, and permits, a complaint to be served only upon persons charged with engaging in unfair labor practices (Section 10 (b)). Only employers can be found to have engaged in such practices (Section 8), and a labor organization is expressly declared not to be an employer (Section 2 (2)). Accordingly, under the Act only employers are required to be notified or joined as parties. It is only upon employers that an order of the Board can impose any enforceable obligation. The rights of persons, such as the Association, who may be indirectly affected by the Board's orders are protected under the statute (1) by provision for intervention before the Board, and (2) by the right to challenge the order in the circuit court of appeals. Thus, the

Association could have sought permission to intervene in the proceedings before the Board under Section 10 (b) of the Act. After the Board's order was issued, and whether or not it had previously intervened before the Board, the Association might have filed a petition for review of the order, as a "person aggrieved", in the circuit court of appeals under Section 10 (f). If after filing such a petition the Association had desired further hearing on the facts, it could have petitioned the court for leave to adduce additional evidence (Sections 10 (e) and 10 (f)). These provisions of the Act are comprehensive. They preclude any inference that the presence of the Association was affirmatively necessary to the Board's jurisdiction to issue the order here in question.

(b) No question of the constitutional adequacy of the statutory procedure, as applied to the Association, is before this Court or was before the court below. The respondents could not complain that the Board's order, pursuant to the statute, infringed rights of the Association under the Constitution, even if the order did so. The employer "can complain only of the infringement of its own constitutional immunity, not that of its employees." *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515, 558, and cases there cited.

(c) Even if a constitutional objection had been properly raised by the Association, however, it would plainly be without merit. Contrary to the

statement of the court below (R. 541) that "the union *enjoined* has not been notified or heard" (italics supplied), the order of the Board neither imposes nor purports to impose any enforceable obligation upon the Association. In no view, therefore, can there be any constitutional requirement that the Association be made an actual party to the proceedings or that it be formally notified thereof.

We are aware of no authority suggesting a constitutional necessity that the Association be permitted to participate in any manner in the proceedings. Thus, in both the *Texas & New Orleans* case, 281 U. S. 548, and the *Virginian Railway* case, 300 U. S. 515, recognition was ordered withdrawn—expressly in the first case and by necessary effect in the second—from company-dominated unions who were not parties to the suits. Numerous judicial applications of the equitable rule as to indispensable parties[19] are persuasive as to the validity

[19] Thus, in *General Investment Co.* v. *Lake Shore Ry.*, 260 U. S. 261, 283, 285–6, the Court held that one of certain railroads which had contracted to submit to their stockholders an agreement for consolidation was not an indispensable party in a suit to enjoin another of the contracting carriers from consummating the consolidation. Similarly, a defendant may be enjoined from performing what an absent person not made a party to the suit has contracted with him that he may do. *N. Y. Phonograph Co.* v. *Jones*, 123 Fed. 197 (S. D. N. Y.); *E. L. Husting Co.* v. *Coca Cola Co.*, 194 Wis. 311, 216 N. W. 833, rehearing denied, 205 Wis. 375, 238 N. W. 626, certiorari denied, 285 U. S. 538; *Nokol Co.* v. *Becker*, 318 Mo. 292, 300 S. W. 1108; *Alcazar Amusement Co.* v. *Mudd & Colley Amusement Co.*, 204 Ala. 509, 86 So. 209; *Meyer* v. *Washington Times Co.*, 76 F. (2d) 988 (App.

of such procedure. That rule, of course, expresses a principle of judicial administration (*Elmendorf* v. *Taylor*, 10 Wheat. 152, 166–167) and not of due process (*McCaughey* v. *Lyall*, 224 U. S. 558), but statements of the rule, under which the Association would not be regarded as an indispensable party, clearly indicate that it could constitutionally be excluded by statute.

The Act, however, presents no such question. The Association is assured full rights of participation with respect to the proceedings. It might have intervened in the original proceedings before the Board (Section 10 (b)). Compare *United States* v. *Merchants & Manufacturers Traffic Ass'n*, 242 U. S. 178, 188. This right alone would protect

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D. C.), certiorari denied, 295 U. S. 734. Again, courts have frequent occasion even to declare contracts invalid, or prohibit their making in the future, in suits to which only one of the parties is a respondent. *E. g.*, *Dr. Miles Medical Co.* v. *Park & Sons*, 220 U. S. 373; *Butterick Co.* v. *Federal Trade Commission*, 4 F. (2d) 910 (C. C. A. 2d). Indeed, it was early announced by this Court that—

"It can never be indispensable to make defendants of those against whom nothing is alleged and from whom no relief is asked." (*Payne* v. *Hook*, 7 Wall 425, 432.)

To the same effect is *Mechanics' Bank* v. *Seton*, 1 Pet. 299, 306. Under the view that the test to determine whether an absent person is an indispensable party is the practical one whether the decree asked by the plaintiff leaves open to the absent party the effective assertion and protection of his rights (*Roos* v. *Texas Co.*, 23 F. (2d) 171, 172 (C. C. A. 2d)), certainly the Association cannot be regarded as indispensable in the light of the safeguards available to it under the statute.

it, if it had knowledge of the proceedings; and it is inconceivable that it could not be established, were the issue presented, that the Association did have such knowledge.[20] In any event, the Association has the right under Section 10 (f) of the statute to apply to the circuit court of appeals to have the order set aside; or it might have sought to intervene in the proceedings brought in the circuit court of appeals by the Board. Due process does not require a hearing prior to judgment, even of a party bound thereby; the Constitution is satisfied if defenses may be presented on appeal. *American Surety Co.* v. *Baldwin*, 287 U. S. 156, 168, and cases there cited; *Moore Ice Cream Co.* v. *Rose*, 289 U. S. 373, 384.

(3) Judge Dickinson's argument that the Board's order condemns a union limited in membership to the employees of any particular em-

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[20] The proceedings before the Board were publicly held in Pittsburgh, the center of the respondents' activities; and the illegality of the Association's formation and administration was a principal issue and subject of testimony at one of the official hearings. Among the witnesses were officials of the respondents who were members of the Association's own joint reviewing committee. (Duvall, R. 377, 431; Dow, R. 469, 475; Davidson, R. 462, 481; Crawford, R. 462, 489, 500.)

In any event, we think that as a matter of law notice to the respondents was notice to the Association. The Board found that the control of respondents "so permeates every aspect of its (the Association's) operations that the Association and the management cannot be regarded as separate entities" (R. 27). As before stated, p. 30, *supra*, this finding is amply supported by the record.

ployer obviously misapprehends the meaning of the order. The Board's order requires withdrawal of recognition from the Association not because the Association is limited in membership to respondents' employees but because it is dominated by respondents and is not a true representative of those employees. Nothing in the order can be regarded as preventing respondents' employees from selecting a representative not affiliated with an outside labor organization, and limited to respondents' own employees.

(4) It is urged that the employees involved in this case were employed by subsidiaries of the respondent Pennsylvania Greyhound Lines, Inc., and not by respondents. The Circuit Court of Appeals unanimously rejected this contention. With respect to it Judge Biggs declared (R. 543): "There was ample evidence before the Board to sustain its finding that the discharged employees were in fact mainly employed by the respondent Pennsylvania Greyhound Lines, Inc., for the benefit of subsidiary corporations engaged in actual transportation operations in interstate commerce." Since the Board's finding is supported by evidence, it will not be disturbed by the courts. *Washington, Virginia & Maryland Coach Co.* v. *National Labor Relations Board,* 301 U. S. 142, 147.

It is sufficient to point out, in support of the Board's finding, that the men at the Pittsburgh garage were paid by Pennsylvania Greyhound Lines, Inc. (R. 124, 330; Bd. Ex. 38), one of the

respondents, and could be discharged by its officials (R. 420–22), and that application blanks for employment were made out in the name of the Greyhound Management Co. (Bd. Ex. 43; R. 469, 477), the other of the respondents. The employees' group insurance was in the name of Greyhound Management Co. (R. 146), while the individual employee's application for insurance gave the name of the employer indiscriminately as Pennsylvania Greyhound Lines, Inc. or Greyhound Management Co. (Bd. Exs. 45 to 53). The name of the employees' association established by respondents is "Employees Association of Pennsylvania Greyhound Lines, Inc." (Resp. Ex. 6). Various other documents dealing with employees' activities bear the name of the respondent companies (Bd. Exs. 60–63, 65, 75–86; Resp. Ex. 3; R. 356). The evidence on this question is summarized at greater length in the Board's findings (R. 51–52).

Respondents suggest in their brief in opposition to the petition for certiorari that under *Crowell* v. *Benson,* 285 U. S. 22, the court must determine *de novo* the question of whether the persons here involved are their employees. Although we believe that this argument misconceives the effect of that decision, it is not necessary to consider that question here. For regardless of the scope of judicial review there can be no question on the record in this case that the Board's finding that the respondents here were the employing companies is correct. The evidence points clearly to respondents as the

employers and to no one else. Respondents are attempting to take advantage of the complexity of the Greyhound system of holding companies to confuse the issue.

(5) Respondents also attack the jurisdiction of the Board on the ground that no charge was filed with the Board by respondents' employees, but only by a labor organization having no real controversy with the respondents.

The first and most obvious answer to this contention is that the charge was filed by Local Division No. 1063 of the Amalgamated Association of Street, Electrical Railway and Motor Coach Employees of America (R. 3–5), and that this division of the national organization was composed exclusively of respondents' employees (R. 254) and acted as the agent of those employees who were its members (R. 15, 95, 143). The organization had about 50 or 60 members (R. 77, 119, 288–89), and clearly was not merely "negligible" or "embryonic", as the respondents assert. Moreover, even if the charge had not been filed by employees, the Board would not lack jurisdiction. The Act does not require that a charge be filed by an employee,[21] and the Board's rules permit charges to be filed by "any

[21] The pertinent provision of the Act is the first part of Section 10 (b), which reads as follows: "Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges * * *."

person or labor organization" (Article II, Section 1).

Respondents assume that a proceeding before the Board is a controversy between the person making the charge and the employer. This is not so. The charge is merely a device for bringing an alleged violation of the Act to the attention of the Board. The Board then decides for itself whether to issue a formal complaint, and a proceeding before the Board is commenced only if such a complaint is issued. The case or controversy then is between the Government, represented by the Board, and the respondent—not between the person filing the charge and respondent. *Agwilines, Inc.* v. *National Labor Relations Board,* 87 F. (2d) 146, 150–151, (C. C. A. 5th); *cf. National Labor Relations Board* v. *Carlisle Lumber Co.,* (C. C. A. 9th), decided December 13, 1937. The proceeding is precisely the same as under the Federal Trade Commission Act. That Act does not "provide private persons with an administrative remedy for private wrongs. The formal complaint is brought in the Commission's name; the prosecution is wholly that of the Government; * * *. A person who deems himself aggrieved by the use of an unfair method of competition is not given the right to institute" a proceeding but only to file a charge. *Federal Trade Commission* v. *Klesner,* 280 U. S. 19, 25. The above language is equally applicable to the National Labor Relations Act, the procedural provisions of which were in large part modeled on the Federal Trade Commission Act.

CONCLUSION

It is respectfully submitted that the judgment below should be reversed in so far as it denies enforcement to subdivisions (c) and (d) of paragraph 4 of the Board's order.

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JANUARY 1938.

U. S. GOVERNMENT PRINTING OFFICE: 1938